

PT 97-9

Tax Type: PROPERTY TAX

Issue: Government Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

CENTRAL LAKE COUNTY JOINT)		
ACTION WATER AGENCY)		
Applicant)		
)	Docket #	93-49-242
v.)		
)	Parcel Index #s	10-01-400-011 (0000)
THE DEPARTMENT OF REVENUE)		10-01-400-011 (0011)
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Jeffrey D. Greenspan appeared on behalf of Central Lake County Joint Action Water Agency.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago Illinois, on May 8, 1996, to determine whether or not Lake County parcels numbered 10-01-400-011 (0000) and 10-01-400-011-(0011) qualified for exemption during the 1993 assessment year.

Ms. Melanie VanHeirseele, assistant executive director of the Central Lake County Joint Action Water Agency (hereinafter referred to as the "Applicant"), and Mr. Leonard M. Rago, associate with Camp Dresser & McKee, Inc., the consulting engineer for the applicant, (hereinafter referred to as the "Consulting Engineer") were present and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant is a Municipal Joint Action Water Agency duly organized and operating under the Intergovernmental Cooperation Act. The second issue is whether the applicant owned the parcel here in issue during all or part of the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it

is determined that the applicant is a duly organized and operating Municipal Joint Action Water Agency. It is also determined that during the period January 1, 1993, through March 26, 1993, the parcels here in issue were held in trust for the use and benefit of the applicant who was in possession of said parcels and operating a water system thereon, which was sufficient to establish ownership for real estate tax purposes during that period. Finally, it is determined that said parcels were conveyed to the applicant by a trustee's deed dated March 26, 1993, which established applicants ownership of these parcels for the period March 26, 1993, through December 31, 1993.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, is that these parcels qualified for exemption for 77% of the 1993 assessment year, or in other words from March 26, 1993, through December 31, 1993, was established by the admission in evidence of Department's Exhibits numbered 1 through 5B.

2. On December 23, 1993, the Lake County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning these parcels for the 1993 assessment year, to the Department. (Dept. Ex. No. 1)

3. On August 18, 1994, the Department notified the applicant that it was approving the exemption of these parcels for 77% of the 1993 assessment year. (Dept. Ex. No. 2)

4. By a letter dated September 2, 1994, one of the applicant's attorneys requested a formal hearing in this matter for the purpose of determining whether the applicant was entitled to a 100% exemption in this matter for the 1993 assessment year. (Dept. Ex. No. 3)

5. The May 8, 1996, hearing in this matter was held pursuant to that request.

6. The applicant is an intergovernmental cooperative. It was organized in 1986 by nine communities in Lake County for the purpose of constructing a Lake Michigan water supply project that would provide treated Lake Michigan water to the residents of those communities. (Tr. pp. 13 & 14)

7. The members of the applicant are Lake Bluff, Grayslake, Gurnee, Libertyville, Mundelein, Round Lake, Round Lake Heights, Round Lake Park, Round Lake Beach, and the County of Lake. The County of Lake is a member of the applicant representing three specific areas, the Village of Vernon Hills, and the unincorporated areas of Knollwood/Rondout and Wildwood. (Tr. p. 14)

8. The applicant is a municipal joint action water agency duly organized and operating under the Intergovernmental Cooperation Act, 5 **ILCS** 200/3.1 *et seq.*

9. The applicant financed its water purification, transmission and distribution system by the sale of both general obligation and revenue bonds. Since the debt service schedules on these bonds started in May 1992, it was imperative that the applicant be an operating, revenue producing utility at that time. (Tr. p. 14)

10. The parcels here in issue, commonly known as 2100 Mallory Drive, are located in the Village of Libertyville. Said parcels are improved with a booster pump station consisting of a building containing the booster pumps and two stand pipes. (Dept. Ex. No. 1I)

11. The consulting engineer for the applicant prepared the design and bid specifications for this booster pump station during 1989. The bid of Paul H. Schwendener, Inc. to construct these facilities was accepted in December 1989. (Tr. p. 35, & Appl. Ex. No. 1)

12. On January 25, 1991, the applicant, as buyer, and the Northern Trust Bank, Lake Forest, Trust No. 8485 and the beneficiaries thereof, (hereinafter referred to as the "Northern Trust") as seller, entered into an amended agreement of purchase concerning these parcels. Pursuant to that agreement the applicant received possession of these parcels on that date. The Northern

Trust, agreed that if the parties did not reach an agreement on the terms of the sale, the Village of Libertyville would file a condemnation suit, which the Northern Trust would not oppose, and that the condemnation award would be the agreed sale price of \$666,890.00. Pursuant to the execution of this agreement the Northern Trust, the applicant and the Village of Libertyville established an escrow agreement at the Chicago Title and Trust Company. The Northern Trust, the applicant and the Village of Libertyville, placed the amount of the sales price and a deed dated January 25, 1991, in this escrow agreement. (Dept. Ex. No. 1E)

13. The applicant took exclusive possession of these parcels pursuant to the above agreement on January 25, 1991, and retained exclusive possession of those parcels thereafter. (Tr. p. 30). The construction of the road, water and sewer lines to the boundary of these parcels was done by the seller at a later date. (Tr. pp. 41 & 42)

14. Subsequent to the execution of the amended agreement and the escrow agreement, the seller decided to reconfigure the subdivision. The Village was thereby delayed in issuing its plat approval, which delayed the closing of the sale till March 18, 1993. (Tr. p. 29)

15. The construction contract with Paul H. Schwendener, Inc. (hereinafter referred to as the "Contractor") was executed on January 24, 1991. The contractor was given notice to proceed with the work during February 1991. By February 21, 1991, the contractor actually began construction on the site. (Tr. pp. 36 & 37 & Appl. Ex. No. 1)

16. The work on this project proceeded in a workmanlike manner until April of 1992, when the work was substantially complete and the applicant took possession of the facilities and began pumping water. (Tr. p. 38)

17. On June 8, 1992, a Certificate of Substantial Completion was issued by the consulting engineer to the applicant. On September 8, 1992, the Village of Libertyville issued an occupancy permit to the applicant. (Appl. Ex. No. 1)

18. I find that on January 1, 1993, these parcels were held in trust by the Northern Trust, pursuant to the agreement dated January 25, 1991, and accompanying escrow agreement, in trust for the use and benefit of the applicant. This continued until March 18, 1993, when the Northern Trust conveyed these parcels to the applicant.

19. I also find that the applicant was in possession of these parcels and the booster pump station and stand pipes located thereon, and was operating same during the period January 1, 1993, through March 18, 1993.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

5 **ILCS** 220/3.1(c) reads in part as follows:

All property, income and receipts of or transactions by a Municipal Joint Action Water Agency shall be exempt from all taxation, the same as if it were the property, income or receipts of or transaction by the member municipalities, public water districts or counties.

35 ILCS 205/19.6 exempts certain property in part as follows:

...all property owned by any city or village located within the incorporated limits of the city or village, except property that has been leased or may be leased by a city or village to lessees who are bound under the terms of the lease to pay the taxes on the property.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is

statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

I have previously found that the Northern Trust held these parcels in trust for the use and benefit of the applicant during the period January 1, 1993, through March 18, 1993, pursuant to the agreement dated January 25, 1991, and accompanying escrow agreement. The Illinois Courts have held that property will qualify for exemption where it is held by an organization in trust for the use and benefit of an exempt organization. See People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). See also Community Mental Health Council, Inc. v. Department of Revenue, 186 Ill.App.3d 73 (1989). Finally in Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062, (5th Dist. 1981) the Appellate Court held that where the nonexempt foundation held title to property for the use and benefit of Southern Illinois University, and the University was in possession and had control of the property, said property was owned by the University, an exempt organization, for property tax exemption purposes and therefore qualified for exemption from real estate taxation. That case, I conclude, is similar to the facts here, where the nonexempt Northern Trust held bare legal title to these parcels, in trust for the use and benefit of the applicant, which is an exempt organization. In addition, the applicant was in possession of and had control of, and also operated said parcels during the period January 1, 1993, through March 18, 1993.

I therefore recommend that Lake County parcels numbered 10-01-400-011 (0000) and 10-01-400-011 (0011) be exempt from real estate taxation for the entire 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
April 1, 1997